

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.191/2003

This the 23rd day of June, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

T.L.Gupta S/O Mangat Aggarwal,
Asstt. Engineer, C.P.W.D.,
R/O AG-1/117-B, Vikas Puri,
New Delhi.

... Applicant

(By Shri B.S.Mainee, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Urban
Development & Poverty Alleviation,
Nirman Bhawan, New Delhi.
2. Director General of Works,
C.P.W.D., Nirman Bhawan,
New Delhi.
3. Additional Director General,
Northern Region, CPWD,
Sewa Bhawan, New Delhi.
4. Engineer-in-Chief,
P.W.D., Govt. of N.C.T. of Delhi,
Kasturba Gandhi Marg,
New Delhi.
5. Superintending Engineer,
Co-ordination Circle (Civil),
C.P.W.D., East Block,
R.K.Puram, New Delhi.
6. Superintending Engineer,
Delhi Central Circle No.V,
C.P.W.D., East Block,
R.K.Puram, New Delhi. ... Respondents

(By Ms. Harvinder Oberoi, Advocate)

O R D E R (ORAL)

Applicant has challenged order dated 26.12.2002
(Annexure A-1) issued by Superintending Engineer,
Coordination Circle (Civil), C.P.W.D., New Delhi,
transferring the applicant to the office of AE, Dev.
Proj. Cir./Divn. against an existing vacancy.

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2. The learned counsel of applicant Shri B.S.Mainee stated that applicant has been transferred from PWD, Division-VI, Government of N.C.T. of Delhi in an illegal and malicious manner because of mala fide intentions as a result of which applicant has been transferred six times within a period of two years. According to the learned counsel, vide Annexure A-2 dated 19.12.2000 applicant was transferred from the office of AE, Kota CSD to AE, Parliament Library Project, New Delhi on completion of four years' tenure. On the request of applicant as the transfer order had been made in the mid academic session of the children, the same was pended till 30.4.2001 by respondents themselves vide Annexure A-3 dated 12.2.2001. Thereafter, applicant was transferred on 24.4.2001 (Annexure A-4) from Parliament Library Project to TLQA (Quality Control), C.P.W.D. under A.D.G.(NR), New Delhi. Applicant was relieved from Kota Central Sub Division on 30.4.2001 to join Parliament Library Project, New Delhi (Annexure A-5). Vide Annexure A-6 dated, i.e., after about three months, yet another order dated 2.8.2001 was issued transferring the applicant to Delhi Aviation Division (DAD), C.P.W.D., New Delhi. Applicant assumed charge at DAD on 9.8.2001 in terms of TR-1 dated 9.8.2001. He was again transferred from Sub Division, Jharoda Kalan to another Sub Division which had yet to be formed, vide order dated 22.8.2001 (Annexure A-9). On applicant's representation that the work relating to Sub Division-I allocated to applicant was being performed by one Shri Gulshan Sharma, AE, applicant was provided a Sub Division at R.H.T.C., Najafgarh vide order dated 27.11.2001 (Annexure A-12).

On 28.11.2001 (Annexure A-16) applicant was allotted Sub Division-I. Vide order dated 8.2.2002 (Annexure A-17) jurisdiction of Sub Division-I was taken by Shri Gulshan Kumar Sharma, AE-II. Subsequently once again applicant was transferred from DAD vide order dated 21.6.2002 (Annexure A-18). He was relieved on 24.6.2002 (annexure A-19). The learned counsel of applicant stated that in this background applicant has been repeatedly transferred six times within two years with mala fide intention. The learned counsel stated that while Annexure A-1 dated 26.12.2002 and Annexure A-2 dated 19.12.2000 be quashed and set aside, applicant be allowed to function as AE, PWD, Division-VI.

3. The learned counsel particularly drew my attention to paragraph 5.9 of the written statement of the respondents in which it has been alleged that applicant has a tainted and blemished service career and that is why the PWD, Government of N.C.T. of Delhi has reverted the applicant back to his parent department, C.P.W.D. The learned counsel stated that if applicant has a tainted and blemished career he could be taken to task by issuing a chargesheet against him, but repeated transfers cannot be resorted to by the authorities which are certainly mala fide and have to be deprecated. The learned counsel further stated that PWD is under the control of the cadre controlling authority, i.e., CPWD and transfer orders are issued by CPWD authorities. Subordinate authorities in the PWD cannot disobey such transfer orders attaching stigma upon the applicant. The learned counsel has relied upon the following in aid of his arguments :



- (1) **Rajiv Saxena v. Collector of Central Excise & Ors.**, ATR 1990 (1) CAT 378;
- (2) **Gopal Chand Saha v. Union of India**, ATR 1990 (1) CAT 384;
- (3) **C.C.Ouseph v. Union of India & Ors.**, ATJ 2000 (1) 54 (CAT, Ernakulam);
- (4) **R.P.Gupta v. Union of India & Ors.**, SLJ 1996 (1) 620 (CAT, Chandigarh);
- (5) **Ashok Kumar Mohey v. Union of India & Ors.**, ATJ 1991 (2) 260 (CAT, Chandigarh);
- (6) **B.S.Pannu v. Union of India & Ors.**, SLJ 1998 (2) 45 (CAT, Principal Bench).

On the other hand, the learned counsel of respondents stated that respondents have not transferred applicant six times on their own. As a matter of fact, applicant has been instrumental for these transfers. When applicant was transferred from Kota on 19.12.2000, he was retained at Kota up to 30.4.2001 on applicant's request. Thereafter, applicant had to be transferred a couple of times in exigencies of service and due to the fact that PWD had not accepted him on transfer, which tangle had to be resolved by CPWD by convening a meeting with the PWD at the highest level. The learned counsel stated that respondents have made arrangements so that applicant was not denied his pay and allowances. The learned counsel further stated that applicant has not established any mala fide against any authority. Transfer is an incidence of service and applicant has no legal right for posting against any particular post. In support of her arguments, the learned counsel has relied upon the following :

- (1) **Abani Kanta Ray v. State of Orissa & Ors.**, JT 1995 (7) SC 467;

(2) Chief General Manager (Telecom) N.E., Telecom Circle & Anr. v. Rajendra Ch. Bhattacharjee & Ors., JT 1995 (1) SC 440;

(3) T.D.Subramanian v. Union of India & Ors., 1981 (3) SLR 607;

(4) State of U.P. & Anr. v. V.N.Prasad (Dr.), 1995 SCC (L&S) 781;

(5) Union of India & ors. v. Ganesh Dass Singh, 1995 SCC (L&S) 1142.

5. After perusing the documents on record, it is found that respondents had ordered retention of applicant at Kota up to 30.4.2001 as per directions of this Tribunal. Thereafter, applicant has been transferred several times as alleged by applicant. Admittedly, PWD authorities ~~have not~~ accepted ^b the applicant on the posting stating that he had a "tainted and blemished service career". Annexure A-26 dated 26.9.2002 has been addressed by Engineer-in-Chief, PWD, Govt. of NCT of Delhi to Director General of Works, CPWD, New Delhi, alleging that applicant has been habitual of creating unhealthy atmosphere with his subordinates as well as with his seniors. It is further alleged, "In the last nine months his output is absolutely zero and actually did no work except wasting his time for making totally unwarranted correspondence with higher officers." As such, the Engineer-in-Chief has expressed his inability to accept the applicant who was asked to report back to Superintending Engineer (Co-ordination). Obviously, the allegation of tainted career and blemished record has been made against applicant by PWD authorities with whom applicant had not served at all. Applicant had not been given any opportunity of defence against these

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allegations. He was not being allowed to take charge because of these reasons by the PWD authorities. Material is available on record indicating that Director General Works, CPWD is the cadre controlling authority and has been ordering transfers of the staff in PWD. Although so far as the first transfer order is concerned, that had been suspended till 30.4.2001 on the request of applicant, but thereafter all the transfer orders have been made by respondents themselves without any fault of applicant. I am in agreement with the learned counsel of applicant that if applicant's work has been tainted and not without blemish, transfer is not the solution. Applicant could be punished for that by holding an enquiry against him. Instead, a simpler solution in the nature of transfer was found which too could not be handled by the PWD and CPWD authorities, which led to frequent transfers of the applicant. Applicant cannot be blamed for this. In the case of **V.N.Prasad** (supra) it has been held that nature of evidence to establish mala fides has to be strong and convincing. In the case of **T.D.Subramanian** (supra) it has been held that when an officer lacked tact in dealing with his subordinates, a certain situation existed for which solution had to be found and transfer was made in such a situation in the exigencies of service. In the case of **Rajendra Ch. Bhattacharjee** (supra) the Hon'ble Supreme Court held that a Government servant has no legal right to insist for being posted to any particular place. In **Abani Kanta Ray** (supra) it was held that the Chairman of an Administrative Tribunal had the responsibility for proper functioning of the Registry and he alone exercises direct control over it.

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6. On the other hand, in the case of **B.S.Pannu** (supra), it was held that even frequency of transfers with reason is also a mala fide. In such a case the veil has to be lifted. In the case of **Rajiv Saxena** (supra) serious allegations against the applicant of misconduct and misbehaviour, it was held, could not be made the ground for transfer without enquiry.

7. In the present case, applicant has been transferred several times for no fault of his. True, that transfer of applicant had been put in abeyance initially on the ground of mid academic session of children but thereafter he was not at all responsible for several orders of transfers passed against him. Whether or not mala fides have been established against authorities, in the case of **B.S.Pannu** (supra) it has been held that even frequency of transfer with reason is also mala fide. These transfers were made time and again on account of the dispute between PWD and CPWD and issuance of transfer orders without application of mind, as those orders either could not be implemented or they were not implemented by the concerned authorities. I am also in agreement with the learned counsel of applicant that although it is undisputed that transfer is an incidence of service and transfers can be made in exigencies of service and in public interest, yet ^{it} it certainly cannot be made by making allegations of misconduct etc. against the Government employee. For such defaults authorities have to put the concerned official on notice and initiate disciplinary proceedings against him, if necessary. The

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facts and circumstances of this case make the rulings cited by the learned counsel of respondents inapplicable to the present case. Applicant has been transferred time and again due to the inefficiency of the authorities. CPWD has not been able to effect implementation of the transfer orders of applicant at the hands of the PWD authorities who are under control of the Director General Works, CPWD.

8. Having regard to the above, the impugned orders dated 26.12.2002 and 19.12.2000 are quashed and set aside. Respondents are directed to allow applicant to take charge in PWD Division-VI within a period of seven days of these orders. The OA is allowed in these terms. No costs.

V.K. Majotra
(V. K. Majotra)
Member (A)

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